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Attorneys for Plaintiff FLIR Systems, Inc.

**IN THE UNITED STATES DISTRICT COURT**

**DISTRICT OF OREGON**

**PORLAND DIVISION**

**FLIR SYSTEMS, INC.**, an Oregon  
corporation,

Civil No.: 3:10-cv-00231-BR

Plaintiff,

vs.

**THOMAS L. GAMBARO**, an individual  
d/b/a **PATENT ENFORCEMENT  
COMPANY; MOTIONLESS  
KEYBOARD COMPANY**, an Oregon  
corporation.

**PLAINTIFF FLIR SYSTEMS, INC.'S  
MOTION FOR PROTECTIVE  
ORDER**

Defendants.

**LR 7-1(a) CERTIFICATION**

The undersigned counsel certifies that the parties have made a good faith effort through personal or telephone conferences to resolve the dispute over whether a protective order is needed and were unable to do so.

**Motion for Protective Order**

For the reasons discussed in FLIR's Status Report on Protective Order and supporting Declaration of Thomas Scanlon, FLIR submits that entry of a protective order in the form attached as Exhibit 1 is warranted. Defendant Gambaro disagrees. Defendant Motionless Keyboard Company ("MKC") is currently represented by James Buchal, but Mr. Buchal has informed the undersigned that review of a protective order is beyond the scope of his engagement by MKC.

The protective order attached as Exhibit 1 differs from the proposed protective order attached to FLIR's Status Report on Protective Order in the following respects:

1. The word "proposed" is deleted.
2. Since no documents have been produced which any party wishes to designate as "CONFIDENTIAL – OUTSIDE COUNSEL'S EYES ONLY," Paragraph 9 has been deleted, resulting in renumbering of all successive paragraphs.
3. In recognition of the fact that Defendant Gambaro is not currently represented by counsel and the scope of MKC's representation is limited, FLIR has added the following unnumbered paragraph to the section denominated "Purpose and Limitations":

“This Order is subject to amendment as circumstances warrant. If, for example, material is designated as ‘CONFIDENTIAL – OUTSIDE COUNSEL’S EYES ONLY’ at a time when the requesting party is not represented by counsel, at the request of such party, this Court will conduct an in camera review of such material and determine at that time how such material will be handled, consistent with the legitimate interests of the designating party in maintaining confidentiality of the material and consistent with the legitimate interests of the requesting party in having access to material relevant to the defense of claims and prosecution of counterclaims in this action.”

FLIR is hopeful that the need to produce highly sensitive material will be alleviated by two motions it intends to file at such time as this Court may lift its moratorium on further motions:

1. A motion for partial summary judgment establishing that Defendant Gambaro is precluded from contesting in this action the claim construction reached in *Motionless Keyboard Co. v. Microsoft Corp.*, No. Civ. 04-180-AA, 2005 WL 1113813, \* (D Or May 6, 2005) and affirmed in *Motionless Keyboard Co. v. Microsoft Corporation*, 486 F3d 1376 (2007).

2. A motion to bifurcate liability and damages, and to stay discovery of damages pending adjudication of the question of whether FLIR is liable for patent infringement.

FLIR submits that, if it is ever compelled to produce material which it believes should be designated “CONFIDENTIAL – OUTSIDE COUNSEL’S EYES ONLY” and if the requesting defendant is unrepresented at that time, this Court could order an *in*

*camera* inspection of such materials or such other relief as it may deem appropriate at that time.

DATED this 6th day of August, 2010.

**BICKEL & BREWER**

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Farooq A. Tayab, *Admitted Pro Hac Vice*

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Of Attorneys for Plaintiff FLIR Systems,  
Inc.

## CERTIFICATE OF SERVICE

I certify that on August 6, 2010, I served or caused to be served a true and complete copy of the foregoing **PLAINTIFF FLIR SYSTEMS, INC.'S MOTION FOR PROTECTIVE ORDER** on the party or parties listed below as follows:

- Via CM / ECF Filing
- Via First Class Mail, Postage Prepaid
- Via Email
- Via Personal Delivery

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individually and dba  
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and Motionless Keyboard Company  
P.O. Box 14741  
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Defendants *Pro Se*

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